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December 22, 2010

Mark J. Langer, Clerk
United States Court of Appeals for the District of Columbia Circuit
333 Constitution Ave., N.W.
Washington, D.C. 20001

Re: Submission under Federal Rule of Appellate Procedure 28(j) in
Heller v. District of Columbia, No. 10-7036 (argued on Nov. 15, 2010,
before Judges Ginsburg, Henderson, and Kavanaugh)

Dear Mr. Langer:

Pursuant to Federal Rule of Appellate Procedure 28(j), Appellants Dick Anthony Heller *et al.* hereby respond to the letter of Appellees District of Columbia *et al.* dated December 20, 2010, advising the Court of a pertinent new authority which “applied intermediate scrutiny rather than strict scrutiny to particular Second Amendment claims.” Instead of addressing restrictions on law-abiding citizens, however, as in the case at bar, *United States v. Reese*, No. 10-2030, 2010 WL 5023256 (10th Cir. Dec. 10, 2010), involved a statute that “prohibit[s] the possession of firearms by narrow classes of persons who, based on their past behavior, are more likely to engage in domestic violence. *Based upon these characteristics*, we conclude that [18 U.S.C.] § 922(g)(8) . . . is subject to intermediate scrutiny.” *Id.* at *9 (emphasis added).

Moreover, *Reese* decided: “Even if we were to apply a strict scrutiny test requiring the government to prove that § 922(g)(8) is narrowly tailored to further a compelling interest, . . . we are persuaded, for essentially the reasons outlined above,

that the government could satisfy these requirements.” *Id.* at *10 n.4. Accordingly, *Reese* does not support the District’s argument that intermediate, rather than strict, scrutiny applies here. Brief of Appellants, 19-26.

Respectfully submitted,

/s/ Stephen P. Halbrook

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CERTIFICATE OF SERVICE

I certify that on December 22, 2010, electronic copies of this letter were served through the Court's CM/ECF system and paper copies were mailed by first-class mail, postage prepaid, to:

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